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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CASCADE FOREST CONSERVANCY, a
non-profit corporation

Plaintiff,

v.

**U.S. DEPARTMENT OF AGRICULTURE-
FOREST SERVICE**, an agency of the U.S.
Government; and **BUREAU OF LAND
MANAGEMENT**, an agency of the U.S.
Government,

Defendants.

Case No.: 3:19-cv-481-MO

**JOINT MOTION FOR STAY OF
PROCEEDINGS & TO WAIVE
PROPOSED PRETRIAL ORDER**

Pursuant to LR 7-1 and 16-5(c), the parties hereby jointly move for a stay of proceedings in the above-captioned action until Nov. 15, 2019, and also for the Court to approve a stipulated waiver of the proposed pretrial order, at this time. The primary grounds in support of the requested stay are that Defendant agencies have within the past several months largely completed providing their responses to each of the four pending 2016 and 2018 requests pursuant to the Freedom of Information Act, 5 U.S.C. § 552, that are the subject of this action. The U.S. Department of Agriculture-Forest Service (“Forest Service”) has identified one final relatively small cache of records in its possession that are potentially responsive to one of Plaintiff’s FOIA requests, but, because these records originated with the Bureau of Land Management (“BLM”), the Forest Service has “referred” the records to the BLM to review before some or all of those non-duplicative records will be provided to Plaintiff. Defendants have committed to complete this review by Sept. 14, 2019, and that commitment is a material reason for why Plaintiff has agreed to this requested stay.

The stay sought by this motion would provide two months for Plaintiff to review the complete responses of both Defendant agencies to the FOIA requests at issue in this case to determine whether they believe such responses comply with the agencies’ legal obligations under FOIA and, depending on the results of that review, to provide an opportunity for the parties to confer on proposed next appropriate steps to resolve this matter. The primary ground in support of the requested waiver of the proposed pretrial order at this time is that the nature of the action does not usually lend itself to being resolved via a trial, but rather, in the event any litigation on the merits of Plaintiffs’ claims may end up being necessary following Plaintiffs’ review as described above, on the basis of cross-motions for summary judgment. In accordance with LR 7-1(a)(1), the parties represent that they have conferred with each other as to the relief sought by

this motion and have come to agreement that such relief would be appropriate for the Court to provide as described in more detail below.

Plaintiff filed its Complaint commencing this action on Apr. 2, 2019, bringing claims challenging the timing and substance of Defendant agencies' responses to four separate FOIA requests. Since the filing of the Complaint, Defendant agencies have provided a series of partial responses to the requests, with the result being that there is just one further cache of materials for BLM to review to ensure that Defendants' responses are complete with respect to all four requests. Defendants have committed through their undersigned counsel to provide the results of BLM's review in this regard, and any further responsive materials, to Plaintiff no later than Sept. 14, 2019, just ten days away. Upon receiving this final element of BLM's response, Plaintiff will then wish to have some time to review all of the materials it has received from Defendant agencies in response to the FOIA requests at issue in this case to determine whether it believes such responses comply with the agencies' obligations under that statute. The parties believe two months is an appropriate length of time for Plaintiff to undertake this review. As a result, this motion seeks a stay until Nov. 15, 2019, two months following the date by which BLM has committed to providing the final element of its response to Plaintiff's latter request.

The parties have agreed to stipulate to a waiver of the proposed pretrial order that otherwise is ordinarily required to be submitted to the Court under the rules. The parties believe that such a stipulation is appropriate in this action at this time because it is not the type of action for which a trial usually would be appropriate or necessary for its resolution, but instead that it can and should usually be resolved either via a stipulated dismissal if the parties can work out any remaining issues among themselves without having to resort to litigating the merits of Plaintiffs' claims or, if that is not possible, on the basis of cross-motions for summary judgment

given that any such issues will involve questions of law that the Court can resolve without the need to engage in fact-finding. (By way of clarification in this regard, it is Defendants' position that a trial would not be appropriate or necessary in this case under any circumstances.)

For the foregoing reasons, the parties jointly move for the Court to enter a stay of proceedings up to and including Nov. 15, 2019, based on the representation and subject to the condition that Defendants provide their final response to the FOIA requests at issue by September 14, 2019, and to approve their stipulated waiver of a proposed pretrial order in this action at this time. In that light, the parties agree to confer and submit a proposed procedural framework and schedule for further appropriate steps to resolve this matter by Nov. 11, 2019, for the Court's consideration.

Respectfully submitted this 4th day of September 2019.

s/ Thomas C. Buchele
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Earthrise Law Center
Of Attorneys for Plaintiff

s/ Stephen J. Odell
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